No. 16-1027

In The
Supreme Court of the United States

RYAN AUSTIN COLLINS,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Virginia

BRIEF FOR RESPONDENT

MARK R. HERRING
Attorney General
of Virginia

MATTHEW R. MCGUIRE
Acting Deputy
Solicitor General

CHRISTOPHER P. SCHANDEVEL
Assistant Attorney General

TREVOR S. COX
Acting Solicitor General
Counsel of Record

OFFICE OF THE VIRGINIA
ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7704
tcox@oag.state.va.us

December 13, 2017

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Whether the Fourth Amendment allows a warrantless daytime inspection of a motorcycle's vehicle identification number and license plate, when the motorcycle is parked in a private driveway, clearly identifiable under a tarp, adjacent to the steps leading to the front door of the house, and when the officer has probable cause to believe that the motorcycle is evidence of multiple crimes and twice has been used to elude police.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES v

INTRODUCTION 1

STATEMENT OF THE CASE 4

SUMMARY OF ARGUMENT 11

ARGUMENT 14

I. The automobile exception to the warrant requirement applies here 14

A. The automobile exception is categorical and applies in cases where, as here, a vehicle is readily mobile and probable cause exists to believe that a search will uncover evidence of a crime 14

1. Multiple rationales justify the automobile exception 15

2. The automobile exception permitted the search here because Officer Rhodes had ample probable cause, before entering the property, to believe that Collins's readily mobile motorcycle was evidence of a crime 18

B. There is no separate exigency requirement to the automobile exception—regardless of the vehicle's location—but even if there were, it would be satisfied here 22

TABLE OF CONTENTS—Continued

Page

C. Officer Rhodes did not need a warrant to walk up the open driveway to reach a motorcycle that the automobile exception authorized him to search 27

D. Collins's fears of roving police searches are not justified: a warrantless automobile search must be supported by probable cause, limited in scope, and reasonable 29

II. The automobile exception and its supporting rationales do not automatically disappear inside a home's curtilage, and it would undermine the utility of the exception to restrict its application there 34

A. The Court's case law demonstrates that a vehicle's location inside or outside the curtilage does not drive the analysis 34

1. *Scher* and *Labron* refute Collins's position 34

2. *Carney* and *Coolidge* do not support Collins's position 38

B. The justifications for the automobile exception still apply when a vehicle is parked on a driveway close to a home 42

TABLE OF CONTENTS—Continued

Page

C. Police officers need bright-line rules when they confront inherently exigent circumstances, so any limitations to the exception should depend on unambiguous physical distinctions, not on indeterminate curtilage analyses..... 45

1. Requiring case-by-case curtilage determinations would undermine the utility and purpose of the automobile exception..... 46

2. The automobile exception should apply at least up to the threshold of an enclosed physical structure in the curtilage—a defined line that is easy to understand and adequately protects privacy and property interests..... 49

III. If the curtilage determination matters, the case should be remanded..... 54

CONCLUSION..... 56

TABLE OF AUTHORITIES

Page

CASES

Almeida-Sanchez v. United States,
413 U.S. 266 (1973) 13, 30

Arizona v. Hicks,
480 U.S. 321 (1987) 33

Arkansas v. Sanders,
442 U.S. 753 (1979) 47, 48

Cady v. Dombrowski,
413 U.S. 433 (1973) 43

California v. Acevedo,
500 U.S. 565 (1991) 18, 32, 45, 48, 49

California v. Carney,
471 U.S. 386 (1985) ..... *passim*

Cardwell v. Lewis,
417 U.S. 583 (1974) 17, 23, 25, 32, 44

Carroll v. United States,
267 U.S. 132 (1925) ..... *passim*

Chambers v. Maroney,
399 U.S. 42 (1970) 24, 26, 32

Coolidge v. New Hampshire,
403 U.S. 443 (1971) 33, 38, 39, 40, 41

Dalia v. United States,
441 U.S. 238 (1979) 27

Dyke v. Taylor Implement Mfg. Co.,
391 U.S. 216 (1968) 19

Florida v. Jardines,
569 U.S. 1 (2013) ..... *passim*

TABLE OF AUTHORITIES—Continued

Page

Gooding v. United States,
416 U.S. 430 (1974) 33

Husty v. United States,
282 U.S. 694 (1931) 24, 25, 35

Illinois v. McArthur,
531 U.S. 326 (2001) 14, 15

Katz v. United States,
389 U.S. 347 (1967) 53

Kyllo v. United States,
533 U.S. 27 (2001) 51

Maryland v. Dyson,
527 U.S. 465 (1999) 14, 23

Maryland v. King,
133 S. Ct. 1958 (2013) 31

Michigan v. Thomas,
458 U.S. 259 (1982) 25

Minnesota v. Carter,
525 U.S. 83 (1998) 48

Missouri v. McNeely,
569 U.S. 141 (2013) 26

New York v. Class,
475 U.S. 106 (1986) 21, 32

Oliver v. United States,
466 U.S. 170 (1984) 46, 55

Ornelas v. United States,
517 U.S. 690 (1996) 19

TABLE OF AUTHORITIES—Continued

Page

Payton v. New York,
445 U.S. 573 (1980) 49, 50

Pennsylvania v. Kilgore,
677 A.2d 311 (Pa. 1995),
rev'd sub nom. Pennsylvania v. Labron,
518 U.S. 938 (1996) 36, 37

Pennsylvania v. Labron,
518 U.S. 938 (1996) ..... *passim*

Riley v. California,
134 S. Ct. 2473 (2014) 26

Robbins v. California,
453 U.S. 420 (1981) 48

Scher v. United States,
305 U.S. 251 (1938) 3, 29, 34, 35, 36, 39

Silverman v. United States,
365 U.S. 505 (1961) 50

South Dakota v. Opperman,
428 U.S. 364 (1976) 2, 17, 23, 45

Steagald v. United States,
451 U.S. 204 (1981) 26

Texas v. Brown,
460 U.S. 730 (1983) 15, 20, 39

United States v. Beene,
818 F.3d 157 (5th Cir. 2016) 55

United States v. Blaylock,
535 F.3d 922 (8th Cir. 2008) 38

TABLE OF AUTHORITIES—Continued

Page

United States v. Brookins,
345 F.3d 231 (4th Cir. 2003) 38

United States v. Chadwick,
433 U.S. 1 (1977) 48

United States v. Dunn,
480 U.S. 294 (1987) 46, 47, 55

United States v. Goncalves,
642 F.3d 245 (1st Cir. 2011) 39

United States v. Hatley,
15 F.3d 856 (9th Cir. 1994) 38

United States v. Hines,
449 F.3d 808 (7th Cir. 2006) 38

United States v. Jones,
565 U.S. 400 (2012) 12, 20, 21

United States v. Knights,
534 U.S. 112 (2001) 14

United States v. Markham,
844 F.2d 366 (6th Cir. 1988) 38

United States v. Ross,
456 U.S. 798 (1982) ..... *passim*

United States v. Santana,
427 U.S. 38 (1976) 50, 51

United States v. U.S. Dist. Court,
407 U.S. 297 (1972) 49

Warden, Md. Penitentiary v. Hayden,
387 U.S. 294 (1967) 19

TABLE OF AUTHORITIES—Continued

Page

Whren v. United States,
517 U.S. 806 (1996) 31, 32

Wyoming v. Houghton,
526 U.S. 295 (1999) 17, 34, 44

Zivotofsky v. Clinton,
566 U.S. 189 (2012) 56

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV ..... *passim*

STATUTES

Va. Code Ann. § 18.2-108(A) (2014) 9

Va. Code Ann. § 46.2-817(B) (2017) 4

RULES

Fed. R. Crim. P. 41(a)(2)(B) 34

Fed. R. Crim. P. 41(e)(2)(A)(ii) 34

OTHER AUTHORITIES

4 W. Blackstone,
Commentaries on the Laws of England
(1769 ed.) 52, 53

Akhil Reed Amar,
Fourth Amendment First Principles,
107 Harv. L. Rev. 757 (1994) 15

TABLE OF AUTHORITIES—Continued

Page

Brief for the United States,
Scher v. United States, 305 U.S. 251 (1938)
(No. 49), 1938 WL 63934 ..... 35, 36

Brief of Petitioner-Appellant,
Scher v. United States, 305 U.S. 251 (1938)
(No. 49), 1938 WL 63933 35

Respondent's Brief in Opposition,
Pennsylvania v. Kilgore, 518 U.S. 938 (1996)
(No. 95-1691), 1996 WL 33467564 37

U.S. Dep't of Justice, Bureau of Justice Statistics,
Police Behavior during Traffic and Street Stops, 2011
(Sept. 2013 (rev. Oct. 27, 2016)) 47

Wayne R. LaFave,
Search and Seizure: A Treatise on the Fourth Amendment
(Thomson/West 5th ed.) (Oct. 2017 update) 45, 54

IN THE
SUPREME COURT OF THE UNITED STATES

RYAN AUSTIN COLLINS, PETITIONER,

v.

COMMONWEALTH OF VIRGINIA, RESPONDENT.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

BRIEF FOR RESPONDENT

INTRODUCTION

As this Court observed nearly a century ago in *Carroll v. United States*, 267 U.S. 132 (1925), a vehicle's inherent mobility poses unique challenges for law enforcement officers searching for evidence of a crime. A vehicle "can be quickly moved out of the locality or jurisdiction in which the warrant must be sought"—making it "not practicable to secure a warrant" before conducting a search. *Id.* at 153. As a result, "practically since the beginning of the Government" the protections of the Fourth Amendment have been understood in light of the "necessary difference" between the search of a vehicle and the search of a "dwelling house" or similar "structure." *Id.* Accordingly, in *Carroll* this Court recognized a categorical exception to the warrant requirement in cases involving vehicle searches: if an

officer has probable cause to believe that a vehicle contains contraband or evidence of a crime, a warrantless search of the vehicle is "valid." *Id.* at 149.

From the start, the Court regarded its categorical exception as "a wise one" because it is "easily applied and understood and is uniform." *Id.* at 159. And although the Court has since held that the categorical rule has multiple justifications—the ready mobility of automobiles as well as individuals' reduced expectations of privacy in them, *see South Dakota v. Opperman*, 428 U.S. 364, 367 (1976)—the rule itself has remained constant. It is as easy to understand and apply today as when first adopted:

> If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more.
>
> *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (per curiam).

The Supreme Court of Virginia properly applied that rule here, when it upheld a police officer's warrantless search of Collins's motorcycle—discovered parked in a driveway and with ready access to the street—that the officer had undisputed probable cause to believe had been used to commit multiple felonies and that had twice escaped pursuing police officers by taking off at dangerously fast speeds. The officer's daytime search of the motorcycle was brief, unintrusive, and limited in scope. He walked a car length or two into the driveway to access the motorcycle, lifted up its

cover and—after recording the license-plate number and Vehicle Identification Number (VIN) on the motorcycle's exterior and determining that the motorcycle was stolen—replaced the cover. He did only what a warrant would have permitted him to do. And because of the automobile exception, he was authorized to do it before the vehicle could be moved and elude police once again.

The Fourth Amendment permitted the officer to make that reasonable search, regardless of whether the patch of driveway under the motorcycle was inside or outside the home's curtilage. In *Scher v. United States*, 305 U.S. 251 (1938), this Court long ago recognized that the automobile exception applies inside the curtilage. And the Court has never said otherwise—perhaps because the justifications for the exception remain just as valid inside the curtilage as outside it. As the facts of this case well demonstrate, Collins's proposed "true exigent circumstances" test for automobile searches inside the curtilage, *see* Br. for Pet'r at 21, ignores the unique, categorical exigencies posed by vehicles. Such a test would be inconsistent with this Court's Fourth Amendment case law. It would trade the "wise" rule announced in *Carroll*, "which is easily applied and understood and is uniform," 267 U.S. at 159, for one that is inadequate and unworkable.

The Court should affirm.

STATEMENT OF THE CASE

1. On July 25, 2013, Officer David Rhodes was driving on the highway in his unmarked police cruiser when an orange-and-black Suzuki motorcycle approached from behind "at a very high rate of speed." Pet. App. 66. Rhodes activated his rear radar and clocked the motorcycle at 100 mph in a posted 55-mph zone. Pet. App. 67, 69-70. As Rhodes turned on his emergency lights, the motorcycle flew by him and sped away.[1] Pet. App. 67. Rhodes initiated pursuit but gave up the chase when it became too dangerous, with the motorcycle reaching speeds exceeding 140 mph. Pet. App. 66-67, 70-71.

Rhodes managed to jot down the motorcycle's license-plate number and his dash camera recorded images of it. Pet. App. 71, 79. A still photograph of the motorcycle taken by the dash camera was later admitted into evidence. *See* Pet. App. 71-72, 79, 116 (photograph).

The orange-and-black motorcycle was "very unique." Pet. App. 86; *see also* Pet. App. 57. It had a "'stretched out' rear wheel, indicating that it had been modified for drag racing." Pet. App. 3; *see also* Pet. App. 34, 57. It also had chrome accents and chrome wheels. Pet. App. 34, 57. Rhodes explained that "it didn't look

---

[1] Willfully and wantonly disregarding a signal from a law enforcement officer in a manner that interferes with or endangers the operation of the law enforcement vehicle or endangers a person was and is a Class 6 felony in Virginia. Va. Code Ann. § 46.2-817(B) (2017).

like a conventional motorcycle." Pet. App. 57. It was "[n]ot something you'd normally see driving down the roadway and not something you can buy from the factory either. So that's a customized type motorcycle." Pet. App. 57-58.

The license-plate number led Rhodes to Eric Jones, who revealed that he had sold the motorcycle to Collins. Pet. App. 78-81; *see also* JA 57-58. Jones admitted that he knew the motorcycle lacked a title certificate and was stolen. JA 52-53. Jones also told Rhodes that he had informed Collins that the motorcycle was stolen.[2] Officer Rhodes drove by the house where he believed Collins lived with his mother, but Rhodes did not find Collins there, nor did he find the motorcycle. Pet. App. 83-84; JA 25.

On September 10, 2013, however, Officer Rhodes received a break in the case; he heard Collins's name mentioned on his police radio in connection with an incident at a branch of the Department of Motor Vehicles. Pet. App. 54. When Rhodes arrived at the DMV, Collins already was being interrogated by Officer McCall, who was investigating Collins as a suspect in a different motorcycle-eluding incident that had occurred on June 4, 2013; that incident had also involved an orange-and-black motorcycle with an extended frame. Pet. App. 72-73; JA 67, 89-90. Collins denied to both officers that he

---

[2] At trial, Jones was not sure if he had told Collins that the motorcycle was stolen, something he assumed was evident from the lack of title. But Jones testified that he told Officer Rhodes that he had informed Collins that the motorcycle was stolen. *See* JA 57-58.

owned a motorcycle and denied that he had been involved in any eluding. Pet. App. 58, 73-74.

As Officer McCall questioned Collins, Officer Rhodes was able to gain access, through another officer, to Collins's Facebook page, where Collins had posted several incriminating pictures. Pet. App. 74-75. The photographs (*see* Pet. App. 112-13) depicted a brick home with a driveway on the left side and a "clearly visible" orange-and-black motorcycle—resembling the one that had eluded Rhodes—parked in the driveway between two other vehicles. *See* Pet. App. 56-57. As soon as he saw the Facebook photograph of the motorcycle, Rhodes was "100% sure" it was the same one that had eluded him. Pet. App. 87.

Officer Rhodes used his smartphone to photograph the Facebook pictures and then returned to Collins to question him about them. Pet. App. 54-55, 74. Collins denied knowing anything about the motorcycle or the house in the photographs; he claimed he had not ridden a motorcycle in a few months. Pet. App. 59; JA 76-77. Collins then left the DMV; Rhodes saw him get into a car with a male driver and a female passenger. JA 18-19.

Around this time, Officer Rhodes received a tip that Collins had taken a motorcycle very recently to a shop to have new tires installed. Pet. App. 62. Rhodes asked Officer McCall to investigate that lead. *Id.*

Rhodes also learned from an informant that the house in Collins's Facebook pictures was on Dellmead Lane. Pet. App. 58. Rhodes drove there and quickly

located the property in the photographs. Pet. App. 58-60. Unbeknown to Rhodes, Collins's girlfriend lived at the house on Dellmead Lane; Collins did not live at the house, but he stayed there several nights a week. Pet. App. 89-91.

When Rhodes arrived at the Dellmead property, he observed a motorcycle, partially covered in a white tarp, parked in the driveway, "plainly" visible from the street.[3] Pet. App. 60. No one appeared to be home. JA 18. The covered motorcycle had the same silhouette as the stretched-out motorcycle Rhodes was looking for, and he could also see a chrome wheel that was not fully covered by the tarp. Pet. App. 60; Pet. App. 77. From the sidewalk, Rhodes took a photograph (*see* Pet. App. 114) of the covered motorcycle. Pet. App. 60-61; JA 80. The motorcycle was "a car length or two" into the driveway. Pet. App. 77. It was parked against a retaining wall, on the left side of the driveway away from the house, near the steps leading from the driveway to the front door. *See* Pet. App. 114. The motorcycle was in the "exact same location" and "exact same position" depicted in the Facebook photographs. Pet. App. 106-07. *Compare* Pet. App. 113, *with* Pet. App. 114.

After photographing the vehicle from the sidewalk, Officer Rhodes walked up the driveway and pulled back the tarp to read the license plate and VIN on the motorcycle's exterior. JA 80. His visual

[3] Collins believes that it was a "motorcycle cover," rather than a "tarp," covering the motorcycle, *see* Br. for Pet'r at 5 n.2, but, consistent with the courts below, this brief refers to it as a tarp.

inspection confirmed that the motorcycle was the same one that had been used to escape him on July 25. JA 81; *see also* Pet. App. 87. Rhodes then ran the VIN and learned that the motorcycle had been stolen in New York. Pet. App. 68. The license plate had been changed from what he had seen on July 25; the new tag was registered to a Kawasaki motorcycle, not the Suzuki. Pet. App. 62. Rhodes then photographed the uncovered motorcycle, *see* Pet. App. 115, and replaced the tarp, Pet. App. 89.

Next, Rhodes returned to his vehicle to surveil the property, anticipating Collins's imminent arrival. JA 18. A short time later, a car drove by that Rhodes recognized as the same car that Collins had gotten into when he left the DMV, but Collins no longer was in it. JA 18-19.

Rhodes walked up the driveway and knocked on the front door of the home; Collins appeared at the door. Pet. App. 64. Collins had changed out of the shorts and flip-flops he had been wearing at the DMV less than an hour earlier. Pet. App. 64-65. Now he was dressed in motorcycle-appropriate attire. Despite that the temperature outside exceeded 90 degrees, Collins had donned jeans, a long-sleeved shirt, and Timberland-type boots, "the same exact boots that the rider was wearing" on July 25. JA 83; *see also* Pet. App. 65, 67.

Collins agreed to speak with Rhodes. He initially claimed to know nothing about the motorcycle; then he said it belonged to a friend. Pet. App. 64-65. As Rhodes

questioned Collins, Officer McCall arrived back from investigating the lead at the shop; he had obtained an invoice showing that Collins had purchased new tires for the motorcycle eight days earlier. Pet. App. 63-64; JA 45-46. Collins then admitted that he had ridden the motorcycle from his mother's house to the shop to have new tires put on. Pet. App. 65. Eventually, upon further questioning, Collins admitted that he had purchased the motorcycle from Jones. Pet. App. 68. Officer Rhodes then placed Collins under arrest for receiving stolen property. Pet. App. 65-66. In a search incident to arrest, Rhodes found the key to the motorcycle in Collins's pocket. Pet. App. 66.

2. The trial court overruled Collins's motion to suppress the evidence of the license plate and VIN that Rhodes had obtained by looking under the tarp. Pet. App. 107. Collins went to trial, was convicted of receiving stolen property,[4] and was sentenced to three years in prison with all but two months suspended (time already served). JA 143-45.

Collins appealed the trial court's decision denying his suppression motion, and the Virginia Court of Appeals affirmed. Pet. App. 32-33. The Court of Appeals found the record insufficient to determine whether the covered motorcycle had been parked within the curtilage of the home. Pet. App. 41. Even assuming it was

---

[4] *See* Va. Code Ann. § 18.2-108(A) (2014) ("If any person buys or receives from another person, or aids in concealing, any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender is not convicted.").

within the curtilage, though, the court found that "numerous exigencies justified both [Rhodes's] entry onto the property and his moving the tarp to view the motorcycle and record its identification number." *Id.* In particular, a reasonable officer could believe that the motorcycle could easily be moved, particularly in light of the prior eluding episodes. Pet. App. 41-42. Moreover, Rhodes knew that Collins was aware that he was being investigated and that the police had Collins's own photographs showing the orange-and-black motorcycle parked in the driveway. Pet. App. 42. And when Rhodes located the house, there was a "tarp over the motorcycle, indicating a possible attempt to conceal it." *Id.* Accordingly, the court found the search lawful and held that it "need not rely on the automobile exception, for exigencies existed aside from the inherent mobility of the motorcycle." Pet. App. 44 n.4.

The Supreme Court of Virginia affirmed, but on a different ground. It noted that "the facts necessary to resolve this case under the automobile exception to the warrant requirement of the Fourth Amendment were established in the record before the trial court." Pet. App. 26. Noting that this Court "has never limited the automobile exception such that it would not apply to vehicles parked on private property," Pet. App. 20, and that "there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view," *id.*, the court concluded that "Officer Rhodes'[s] search of the motorcycle was justified." Pet. App. 26.

One justice dissented. He concluded that Officer Rhodes needed a warrant before looking under the tarp. Pet. App. 30-31 (Mims, J., dissenting). Like the majority, the dissent did "not address the question of whether the part of the driveway where the motorcycle was parked . . . was curtilage or open field for Fourth Amendment purposes." Pet. App. 30 n.4. That did not matter because, in the dissent's view, "[s]earching the tarp without a warrant was unconstitutional even if the area where the motorcycle was parked is considered to be open field." *Id.*

Collins filed a timely petition for a writ of certiorari, which this Court granted on September 28, 2017.

SUMMARY OF ARGUMENT

Under the well-established and long-recognized automobile exception, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Labron*, 518 U.S. at 940.

The Supreme Court of Virginia faithfully applied that categorical rule here, finding no Fourth Amendment violation in Officer Rhodes's warrantless search of the exterior of Collins's motorcycle to read the license-plate number and VIN. Every court below found, and Collins now concedes, that Rhodes had probable cause to believe that the motorcycle was evidence of a crime. Rhodes knew that the motorcycle had been used to elude police, escaping at speeds exceeding 140 mph.

Collins also cannot dispute that Officer Rhodes, having finally found the motorcycle, could not know when the motorcycle would disappear again. Officer Rhodes did know, however, that Collins had just been alerted that police could locate the motorcycle soon and that Collins would have a strong motive to move it.

Collins's sole argument is that the categorical automobile exception does not apply because of where the motorcycle was parked on the driveway—a car length or two from the street but, Collins contends, within the curtilage of the home. Thus, Collins concludes, Officer Rhodes was precluded from acting based on the probable cause that he had developed before the search. Collins claims that Rhodes should have waited to search the motorcycle until after he had secured a warrant based on that probable cause.

But this Court has never limited the application of the automobile exception to particular locations, and this case does not demand a departure from the categorical rule. Indeed, these facts illustrate well the justifications for the automobile exception, and why the Court should decline Collins's invitation to abandon the exception in favor of a case-by-case exigent-circumstances test. Collins's heavy reliance on the Court's analyses in *United States v. Jones*, 565 U.S. 400 (2012), and *Florida v. Jardines*, 569 U.S. 1 (2013)—addressing only what constitutes a "search" under the Fourth Amendment—is misplaced. The Commonwealth concedes that Officer Rhodes searched the motorcycle, so *Jones* and *Jardines* add little to the analysis. Moreover, as Collins correctly concedes, Officer Rhodes had

"probable cause to believe that the motorcycle was the one that had eluded him in traffic," Br. for Pet'r at 5 n.3, and Rhodes formed that reasonable belief before he ever stepped foot onto the driveway.

Collins's fear that applying the automobile exception in this case would allow police officers to "trawl for evidence with impunity," Br. for Pet'r at 34, is unwarranted. "Automobile or no automobile, there must be probable cause for the search." *Almeida-Sanchez v. United States*, 413 U.S. 266, 269 (1973). And the Fourth Amendment still requires that the search be reasonable. The permissible "scope of a warrantless search based on probable cause," even under the automobile exception, is further limited by the nature of the probable cause justifying the search. *United States v. Ross*, 456 U.S. 798, 823 (1982). It "is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." *Id.* at 823. The minimal search conducted by Officer Rhodes did not exceed that scope here.

Collins's proposal to eliminate the automobile exception's applicability to any vehicles parked in the curtilage is unsupported by precedent and inconsistent with the Court's reasons for creating the exception in the first place. Given the reasons for the rule, it would be better to draw the line at the threshold of the home or any other enclosed physical structure inside the home's curtilage. That boundary comports with Fourth

Amendment principles and fully accounts for the considerations that justify the automobile exception.

The Court should affirm, but if it decides that the outcome does turn on whether the motorcycle was inside the curtilage, it should remand for resolution of that question.

ARGUMENT

I. The automobile exception to the warrant requirement applies here.

A. The automobile exception is categorical and applies in cases where, as here, a vehicle is readily mobile and probable cause exists to believe that a search will uncover evidence of a crime.

The central requirement of the Fourth Amendment is that a search must be reasonable. *See, e.g.*, *United States v. Knights*, 534 U.S. 112, 118 (2001) (noting that the "touchstone of the Fourth Amendment is reasonableness"). Although this Court has held that the Fourth Amendment "generally requires police to secure a warrant before conducting a search," *Maryland v. Dyson*, 527 U.S. 465, 466 (1999) (per curiam), "[w]hen faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable," *Illinois v. McArthur*, 531 U.S. 326, 330 (2001); *see also* Akhil Reed Amar, *Fourth*

Amendment First Principles, 107 Harv. L. Rev. 757, 801 (1994) ("The core of the Fourth Amendment, as we have seen, is neither a warrant nor probable cause, but reasonableness."). To that end, the Court has recognized a number of "flexible, common-sense exceptions to this [warrant] requirement." *Texas v. Brown*, 460 U.S. 730, 735 (1983) (plurality opinion) (collecting cases).

One longstanding exception is the "automobile exception," which is simply stated: "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Labron*, 518 U.S. at 940; *see also McArthur*, 531 U.S. at 330 (citing *Labron* and identifying the "search of [an] automobile supported by probable cause" as one set of circumstances that "render[s] a warrantless search or seizure reasonable"). As Collins rightly concedes, "the automobile exception, when it applies, is *categorical*." Br. for Pet'r at 19.

1. Multiple rationales justify the automobile exception.

First recognized in *Carroll* in 1925, the automobile exception is one of the oldest exceptions to the warrant requirement. As the Court explained there, its origins date as far back as the Fourth Amendment itself, to a time when early Congresses had distinguished "as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house

or similar place, and like goods in course of transportation and concealed in a movable vessel where they readily could be put out of reach of a search warrant." 267 U.S. at 151. Thus, the Court perceived "a necessary difference between a search" for contraband goods contained inside a building—such as a "store, dwelling house or other structure," for "which a proper official warrant readily may be obtained"—and "a search of a ship, motor boat, wagon or automobile, . . . where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.* at 153.

On the basis of this "reason and authority," the Court in *Carroll* set forth what it called the "true rule":

> [I]f the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid.
>
> *Id.* at 149.

"[R]eady mobility alone was perhaps the original justification for the vehicle exception," *California v. Carney*, 471 U.S. 386, 391 (1985), but cases after *Carroll* established a "further justification," *Labron*, 518 U.S. at 940. In addition to mobility, "less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is

significantly less than that relating to one's home or office." *Opperman*, 428 U.S. at 367.

> One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.
>
> *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) (plurality opinion).

As the Court noted in *Carney*, "even when enclosed 'repository' areas have been involved," the Court has "concluded that the lesser expectations of privacy warrant application of the exception." 471 U.S. at 391. Automobiles also are "subjected to police stop and examination to enforce 'pervasive' governmental controls 'as an everyday occurrence,' . . . and, finally, are exposed to traffic accidents that may render all their contents open to public scrutiny." *Wyoming v. Houghton*, 526 U.S. 295, 303 (1999) (quoting *Opperman*, 428 U.S. at 368). "The public is fully aware that it is accorded less privacy in its automobiles because of this compelling governmental need for regulation." *Carney*, 471 U.S. at 392.

Although the justifications for the automobile exception have multiplied, what has not changed is its categorical application. The Court has emphasized that point from the start, explaining in *Carroll* that its rule was not only "in keeping with the requirements of

the Fourth Amendment and the principles of search and seizure of contraband forfeitable property," it was also "a wise one because" of its straightforward application. *Id.* at 159. "[I]t leaves the rule one which is easily applied and understood and is uniform." *Id.*; *see also California v. Acevedo*, 500 U.S. 565, 580 (1991) ("We therefore interpret *Carroll* as providing one rule to govern all automobile searches."); *Ross*, 456 U.S. at 807 n.9 ("The rules as applied in particular cases may appear unsatisfactory. They reflect, however, a reasoned application of the more general rule . . . .").

Nearly a century later, having been applied countless times, the rule remains clear: "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Labron*, 518 U.S. at 940. As shown below, those criteria were clearly satisfied here, and the rule was properly applied.

2. The automobile exception permitted the search here because Officer Rhodes had ample probable cause, before entering the property, to believe that Collins's readily mobile motorcycle was evidence of a crime.

Collins rightly concedes that Officer Rhodes had probable cause to believe that the motorcycle parked on his girlfriend's driveway was an instrumentality of the crime of eluding. Br. for Pet'r at 5 n.3. The Supreme Court of Virginia additionally concluded that Rhodes

had probable cause, based on his investigatory conversations with Eric Jones, to believe that the motorcycle was contraband connected to the crime of receiving stolen property. Pet. App. 15; *see also Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216, 221 (1968) (stating that the automobile exception applies when "the officers conducting the search have 'reasonable or probable cause' to believe that they will find the instrumentality of a crime or evidence pertaining to a crime"); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 310 (1967) ("The Fourth Amendment allows intrusions upon privacy under these circumstances, and there is no viable reason to distinguish intrusions to secure 'mere evidence' from intrusions to secure fruits, instrumentalities, or contraband.").

Collins's concession is appropriate. Given "the events which occurred leading up to" the search of the motorcycle, it was clear that the "historical facts, viewed from the standpoint of an objectively reasonable police officer, amount[ed] . . . to probable cause." *Ornelas v. United States*, 517 U.S. 690, 696 (1996). When Rhodes saw the motorcycle in the photograph on Collins's Facebook page, he was "100% sure" it was the one used to elude him. Pet. App. 87. And when he then located the residence depicted in the photograph, with the motorcycle still parked in the driveway, Rhodes recognized the motorcycle's unusual configuration and one of its chrome wheels. Although it was partially covered with a tarp, it was parked in the same position as the tarpless motorcycle in the photograph and had its

distinctive silhouette.[5] Pet. App. 60, 77. And just minutes earlier, Collins had cinched the probable-cause determination by implausibly denying that he knew anything about the house and the motorcycle in the photograph, despite that the photograph was posted on his Facebook page. Pet. App. 58; JA 76-77.

Collins concedes the existence of probable cause, but he fails to appreciate its significance to the analysis. That Officer Rhodes possessed probable cause before he walked up the driveway distinguishes the two cases on which Collins principally relies. They assess only the validity of warrantless searches conducted *without* probable cause.

United States v. Jones addressed only whether a search occurred when officers attached a tracking device to a suspected criminal's vehicle and monitored its movements for four weeks. The Court found that to be a search. 565 U.S. at 404. Although the government argued in the alternative that any search was justified

---

[5] Collins does not distinguish between a search *of* the motorcycle and a search *for* the motorcycle, *see* Pet. App. 27 (Mims, J., dissenting), and it is clear that the tarp did not prevent the formation of probable cause, *see id.* (acknowledging that the "shape and contours of the object were visible through the tarp and suggested [w]hat the object it covered was"). Indeed, "[t]he fact that [Rhodes] could not see through the opaque fabric of the [tarp] is all but irrelevant: the distinctive character of the [tarp] itself spoke volumes as to its contents—particularly to the trained eye of the officer." *Brown*, 460 U.S. at 74 (plurality opinion); *see also Ross*, 456 U.S. at 814 n.19 ("[S]ome containers . . . by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance.") (citation and punctuation omitted).

by reasonable suspicion or probable cause, the Court held that the argument had been forfeited and chose not to address it. *Id.* at 413. Similarly, in *Florida v. Jardines*, the Court held that officers' use of a drug-sniffing dog on a homeowner's front porch to investigate the contents of the home constituted a search. 569 U.S. at 11-12. There too, the Court only addressed whether a search had occurred, not whether the Florida Supreme Court had correctly concluded that the officers lacked probable cause to conduct a search. *Id.* at 5.

Unlike in *Jones* and *Jardines*, there is no dispute in this appeal that a search occurred. It did. Contrary to Collins's suggestion, *see* Br. for Pet'r at 35-36, no one is arguing that a visitor—be it a Girl Scout, a trick-or-treater, or a police officer—is "impliedly invited," *Jardines*, 569 U.S. at 9 & n.4, to remove the cover off a vehicle parked in a private driveway and to inspect its license-plate and VIN information.[6] But neither is it in

---

[6] That does not mean that Rhodes did not have implied license to stand where he did while searching the motorcycle. (Indeed, if Rhodes had pulled his police cruiser into the driveway up to where the motorcycle was parked—something any member of the public could have done—Rhodes would also have passed right by the motorcycle on his way to the front door). Assuming Rhodes did not step off a part of the driveway where he had implied license to be to access the motorcycle, his removal of the tarp to inspect the motorcycle's plate number and VIN could be defended under *New York v. Class*, 475 U.S. 106, 114 (1986) ("[I]t is unreasonable to have an expectation of privacy in an object [like a VIN] required by law to be located in a place ordinarily in plain view from the exterior of the automobile."). The Court does not need to rely on *Class* here, however, because the conceded existence of probable cause makes the point superfluous. Even assuming that

dispute that Officer Rhodes had probable cause to conduct that limited search. He did. There also is no question that probable cause for the search existed before Rhodes set foot on the driveway, and that the information supporting probable cause had been legitimately obtained; no one trespassed with a tracking device or a drug-sniffing dog to obtain it.

B. There is no separate exigency requirement to the automobile exception—regardless of the vehicle's location—but even if there were, it would be satisfied here.

Arguing that the Court should abrogate the automobile exception within the curtilage, Collins asserts that "[w]arrants and exigency cover legitimate needs for searches" there. Br. for Pet'r at 27; *see also id.* at 28 ("There is no reason to lay the broader, categorical automobile exception on top of these rules."). That reasoning is deeply flawed.

To begin with, Collins overlooks that the ready mobility of automobiles creates a categorical "exigency" that justifies a warrantless search if there is probable cause to believe a vehicle contains contraband. *See* Br. for Pet'r at 28 ("[P]olice already may search vehicles in the curtilage without a warrant in

---

the motorcycle was parked on a part of the driveway within the curtilage, but outside the area where Rhodes had implied license to be, Rhodes's ample probable cause entitled him to access the motorcycle and search its exterior for its license-plate and VIN information.

the event of exigency."). The Court's precedents established long ago that "the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible." *Opperman*, 428 U.S. at 367; *see also Carney*, 471 U.S. at 392 ("[T]he exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met."); *Cardwell*, 417 U.S. at 590 (plurality opinion) ("An underlying factor in the *Carroll-Chambers* line of decisions has been the exigent circumstances that exist in connection with movable vehicles.").[7]

Collins's claim that moveable vehicles somehow pose no exigency when parked on a driveway is a frontal assault on the automobile exception; if accepted by this Court, it would undermine the applicability of the automobile exception not just on private property, but *everywhere*. That claim finds no support in this Court's precedents, which have repeatedly rejected Collins's assumption that some *additional* exigency is required to trigger the exception. *See*, *e.g.*, *Labron*, 518 U.S. at 938-39 (reversing the Pennsylvania Supreme Court's decisions to the contrary). The Court made that clear in *Dyson*: "[U]nder our established

---

[7] A vehicle's characteristic ability to be quickly moved—including out of a jurisdiction and the reach of a warrant—obviously distinguishes it from other forms of contraband. While Collins may protest that "drugs and human beings" are "equally mobile," *see* Br. for Pet'r at 21, the only way they become "equally mobile" is if they are placed in a vehicle, at which point they become properly discoverable in a search supported by probable cause.

precedent, the 'automobile exception' has no separate exigency requirement." 527 U.S. at 466.

Thus, Officer Rhodes was not required to wait to act until Collins or someone else moved the motorcycle, as Collins suggests. *See* Br. for Pet'r at 27 (suggesting that instead of conducting an immediate search Rhodes had "the chance to make plans to engage the vehicle when it return[ed] to the street"). As this Court has noted, "[f]ollowing the [motorcycle] until a warrant [could] be obtained seems an impractical alternative since, among other things, the [motorcycle] may be taken out of the jurisdiction." *Chambers v. Maroney*, 399 U.S. 42, 51 n.9 (1970). Indeed, the speed of Collins's motorcycle had proved that pursuing it was not just "impractical" but impossible.

Collins also misses the point of the automobile exception when he proposes limiting its applicability to cases where the officer predicts "there is *actually* no time for a warrant." Br. for Pet'r at 28. Collins fails to appreciate that "the circumstances that furnish probable cause to search a particular auto for particular articles are most often unforeseeable," and "the opportunity to search is fleeting since a car is readily movable." *Chambers*, 399 U.S. at 50-51. Underlying the exception is the recognition that law enforcement cannot know when "the vehicle [will] be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Carroll*, 267 U.S. at 153. For instance, in the early case *Husty v. United States*, the Court recognized that "[the officer] could not know when Husty would come to the car or how soon it would be

removed." 282 U.S. 694, 701 (1931). "In such circumstances," the Court did "not think the officers should be required to speculate upon the chances of successfully carrying out the search." *Id.*

That the opportunity to search may be fleeting "is strikingly true" when, as here, "the automobile's owner is alerted to police intentions and, as a consequence, the motivation to remove evidence from official grasp is heightened." *Cardwell*, 417 U.S. at 590 (plurality opinion). While a warrantless search's validity does *not* "depend upon a reviewing court's assessment of the likelihood in each particular case that the [vehicle] would have been driven away . . . during the period required for the police to obtain a warrant," *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (per curiam), here Rhodes's opportunity to search did prove fleeting because Collins had been "alerted to police intentions," *Cardwell*, 417 U.S. at 590 (plurality opinion). Only a short time after informing police officers that he did not recognize the photograph of 2304 Dellmead Lane—or the motorcycle parked in its driveway—Collins prepared "to remove [the] evidence from official grasp," *id.*, by returning to the house, changing into motorcycle-riding garb, and slipping the key into his pocket. Thus, even if it were necessary to show, in retrospect, that the circumstances actually bore out the inherent exigency, the search here would be valid.

Finally, Collins seeks support from several cases for the proposition that the "'[e]xigent circumstances doctrine is adequate to accommodate legitimate law enforcement needs,'" Br. for Pet'r at 28 (quoting

Steagald v. United States, 451 U.S. 204, 222 (1981); citing *Missouri v. McNeely*, 569 U.S. 141, 165 (2013), and *Riley v. California*, 134 S. Ct. 2473, 2487 (2014)), but none of those cases is on point here. *Steagald* invalidated a warrantless search inside a third party's home conducted while executing an arrest warrant on a fugitive. But unlike in this case, where Rhodes had only just located the driveway shown in the Facebook photographs and had strong reason to believe that Collins would appear shortly to move the motorcycle, the law enforcement officers in *Steagald* "knew the address of the house to be searched two days in advance." 451 U.S. at 222. In *McNeely*, the Court rejected the idea that the loss of blood-alcohol-concentration evidence created a per se exigency, but partly because that evidence "is lost gradually and relatively predictably." 569 U.S. at 155. Here, by contrast, the evidence could be lost entirely and suddenly. And in *Riley*, it was conceded that "officers could have seized and secured [the defendants'] cell phones to prevent destruction of evidence while seeking a warrant," 134 S. Ct. at 2486—something that Collins does not concede. And that distinction does not matter when the automobile exception applies. *See Chambers*, 399 U.S. at 51 ("[A]s in *Carroll* and the case before us now, if an effective search is to be made at any time, either the search must be made immediately without a warrant or the car itself must be seized and held without a warrant for whatever period is necessary to obtain a warrant for the search.").

C. Officer Rhodes did not need a warrant to walk up the open driveway to reach a motorcycle that the automobile exception authorized him to search.

Given that probable cause and the automobile exception excused the need for a warrant to search the motorcycle, Collins is left to argue that Rhodes needed a warrant to cross a few feet of open driveway to access the motorcycle—in other words, that the "physical intrusion to search itself requires a warrant." *See* Br. for Pet'r at 13. Collins is mistaken for several reasons.

First, when the automobile exception applies, "[o]nly the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize." *Ross*, 456 U.S. at 823. Collins does not deny that a magistrate would have issued Rhodes a warrant to *search* the motorcycle, had he applied for one, and that the warrant would have authorized him to do exactly what he did. A second, supplemental warrant to *access* the motorcycle would have been unnecessary. *See id.* at 820-21 (noting that a search "is not limited by the possibility that separate acts of entry or opening may be required to complete the search"). *Cf. Dalia v. United States*, 441 U.S. 238, 257 (1979) (warning against "pars[ing] too finely the interests protected by the Fourth Amendment" and noting that "[o]ften in executing a warrant the police may find it necessary to interfere with privacy rights not explicitly considered by the judge who issued the warrant"). Given that Rhodes's warrantless search was just "as the magistrate could

authorize," *Ross*, 456 U.S. at 823, no threshold warrant was needed to conduct it.

Second, Collins's novel proposal—that before an officer can conduct a legitimate warrantless search within the curtilage, he must obtain a warrant to enter the curtilage—would thwart not just warrantless automobile searches but *all* warrantless searches within the curtilage. An officer observing the ongoing destruction of contraband inside the curtilage would be helpless to intervene, for lack of a magistrate's permission to cross into the curtilage to do so. An officer who pulls over a vehicle onto the side of the road, onto the curtilage of a third party's property, could not approach the vehicle without first obtaining a warrant. Even a consent-based search of an object or area inside the curtilage could be jeopardized if the officer did not obtain specific consent not only to search that object or area but also to enter the curtilage first. Such examples seem unreasonable because they are: by necessary implication, authorization to search an area gives authority to access the area. *See id.* at 820-21 ("A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found."). Because Rhodes was permitted to search Collins's motorcycle, he was permitted to access it in order to search it.

Third, Rhodes did not need a warrant to cross the driveway because there was no "search" of that intervening space for Fourth Amendment purposes. Even assuming he stepped onto a part of the driveway where guests lacked implied license to be, *but see supra*

at 21-22 n.6, he still did not "search" the space between *him and the motorcycle because he did not "use[] a* physical intrusion to explore details of the home," *Jardines*, 569 U.S. at 11; he simply accessed the object of a lawful search. *See Scher*, 305 U.S. at 255 (noting that where a car passed "into the open garage closely followed by the observing officer" and was then searched, "[n]o search was made of the garage").

Given that he possessed probable cause to search *the motorcycle, Rhodes proceeded exactly as he was en*titled to under the automobile exception. Although he could have delayed his brief search to obtain a warrant to conduct the very same search, that would have required him to ignore the risk that Collins would return *and move the motorcycle in the interim; and that risk* is the very reason the automobile exception exists.

D. Collins's fears of roving police searches are not justified: a warrantless automobile search must be supported by probable cause, limited in scope, and reasonable.

Collins worries that upholding the search here would authorize "warrantless intrusions into garages or carports to remove protective covers and rummage through vehicles." Br. for Pet'r at 39. His fears of such intrusions are overblown and, in any event, lie beyond what the automobile exception permits.

*To begin with, whether a search is conducted pur*suant to a warrant or not, the search must be justified

by probable cause. "[T]he *Carroll* doctrine does not declare a field day for the police in searching automobiles. Automobile or no automobile, *there must be probable cause* for the search." *Almeida-Sanchez*, 413 U.S. at 269 (emphasis added). "[I]n a case showing probable cause, the Government and its officials are given the opportunity which they should have, to make the investigation necessary to trace reasonably suspected contraband goods and to seize them." *Carroll*, 267 U.S. at 156.

Collins also ignores that, under the automobile exception, "[o]nly the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize." *Ross*, 456 U.S. at 823. Thus, Collins's concern about the potential scope of an automobile search lies not with the exception's waiver of the warrant requirement, but instead with the fact that probable cause permits officers to conduct automobile searches at all. *See* Br. for Pet'r at 19 (worrying that "[i]f the automobile exception applies on curtilage, . . . then the police can search a vehicle there (in driveways, parking patios, carports, or garages) day or night"). But officers already can conduct searches within the curtilage. Indeed, the scenarios Collins conjures up are as likely to transpire with a warrant as without—including his hypothetical that, "[b]y timing [a] search correctly," a "savvy police officer" could use the search as a "bootstrap" to peer "within the sanctity of the home." *Id.* at 30. That possibility is equally present when an officer searching an automobile close to a house has obtained a warrant for the search.

As it is, police officers may search only those areas or items that they have probable cause to search: "[t]he scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." *Ross*, 456 U.S. at 823. This limitation, among others, prevents police officers from "'trawl[ing] for evidence,'" *see* Br. for Pet'r at 34 (quoting *Jardines*, 569 U.S. at 6), in the ways that Collins fears possible if the automobile exception is upheld here—*e.g.*, that an officer could "'stan[d] on the porch and us[e] . . . binoculars to peer . . . into the home's furthest corners.'" *See id.* (quoting *Jardines*, 569 U.S. at 12 (Kagan, J., concurring)).

Collins also can take comfort in the requirement that every search must be reasonable. *See, e.g.*, *Maryland v. King*, 133 S. Ct. 1958, 1970 (2013) ("Even if a warrant is not required, a search is not beyond Fourth Amendment scrutiny; for it must be reasonable in its scope and manner of execution. Urgent government interests are not a license for indiscriminate police behavior."). "[E]very Fourth Amendment case, since it turns upon a 'reasonableness' determination, involves a balancing of all relevant factors. With rare exceptions not applicable here, however, the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren v. United States*, 517 U.S. 806, 817 (1996). Such "rare exceptions" include cases where searches and seizures are "conducted in an extraordinary manner" that is "unusually harmful to an individual's privacy or even physical interests—such

as, for example, seizure by means of deadly force, unannounced entry into a home, entry into a home without a warrant, or physical penetration of the body." *Id.* at 818 (internal citations omitted).

By any standard, Rhodes's search of the motorcycle was not unreasonable. First, the search was extremely narrow in scope and was conducted to obtain information in which Collins had no privacy interest whatsoever—the motorcycle's VIN and license-plate number. *See Class*, 475 U.S. at 114 (holding that a search of a VIN was reasonable because it is not subject to reasonable expectation of privacy for Fourth Amendment purposes). Second, the search was only minimally invasive, limited as it was to the motorcycle's exterior. *See Cardwell*, 417 U.S. at 592 (plurality opinion) (noting that "where probable cause exists, a warrantless examination of the exterior of a car is not unreasonable"). Searching the exterior of a vehicle "intrudes far less on individual privacy than does the incursion sanctioned long ago in *Carroll*." *Acevedo*, 500 U.S. at 576. "If destroying the interior of an automobile is not unreasonable," then Rhodes's search of the motorcycle's exterior could scarcely be considered unreasonable. *Id.*

Third, Rhodes's search was short in duration. "[C]arrying out an immediate search without a warrant," and completing it quickly, was less burdensome than the alternative: "seizing and holding [the motorcycle] before presenting the probable cause issue to a magistrate." *Chambers*, 399 U.S. at 52. "For constitutional purposes," this Court has held that there is

"no difference" between those two options—"[g]iven probable cause to search, either course is reasonable under the Fourth Amendment," *id.*—but Rhodes's brief search was clearly the less intrusive approach. Rhodes's search avoided interfering with the possessory interest, if any, that Collins had in his stolen motorcycle. Unlike the police officers in *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), Rhodes conducted the search immediately, during the narrow window of time after he located the motorcycle and before Collins was able to remove the evidence. Fourth, Rhodes did not detour from conducting the primary search; he proceeded directly up the driveway to the motorcycle, and returned directly back down it. There is no assertion that he went beyond the scope of a reasonable, warrantless search. *Cf. Arizona v. Hicks*, 480 U.S. 321, 325-26 (1987) (holding that exigent circumstances may legitimate entry of a dwelling place, but a subsequent warrantless search is limited by the exigencies that justified its initiation; absent probable cause, a separate search is unconstitutional).

For all these reasons, Rhodes's search, supported by probable cause, was reasonable and faithful to the Fourth Amendment.[8]

---

[8] In contrast with the "outright dangerous" nighttime searches Collins imagines, Br. for Pet'r at 20, Rhodes conducted the search here in the light of day. Although this Court has not held that the Fourth Amendment prohibits the execution of warrants at night, *but cf. Gooding v. United States*, 416 U.S. 430, 464-65 (1974) (Marshall, J., dissenting) (noting that such a limitation "may well be a constitutional imperative"), a warrantless search conducted at night may be invalidated on other grounds. *See, e.g.*,

II. The automobile exception and its supporting rationales do not automatically disappear inside a home's curtilage, and it would undermine the utility of the exception to restrict its application there.

A. The Court's case law demonstrates that a vehicle's location inside or outside the curtilage does not drive the analysis.

Nothing in the Court's precedents indicates that the automobile exception applies outside the curtilage but not inside it. Indeed, if its application were so cabined, "one would have expected that substantial limitation to be expressed." *Houghton*, 526 U.S. at 301.

1. *Scher* and *Labron* refute Collins's position.

The Court first upheld the search of an automobile on private property almost eighty years ago. Just thirteen years after *Carroll*, the Court invoked the automobile exception in *Scher*, where the police had followed the defendant's vehicle onto private property and into a garage, which was located "a few feet back of his residence and *within the curtilage*." 305 U.S. at 253 (emphasis added). Police searched the vehicle, discovered contraband liquor, and arrested Scher.

Fed. R. Crim. P. 41(e)(2)(A)(ii) (requiring execution of a warrant "during the daytime, unless the judge for good cause expressly authorizes execution at another time"); Fed. R. Crim. P. 41(a)(2)(B) ("'Daytime' means the hours between 6:00 a.m. and 10:00 p.m. according to local time.").

Scher urged the Court to limit the scope of the automobile exception to the facts of *Carroll*, arguing that it was "not a case where an automobile is stopped and searched on the highway. It is a case where private premises were invaded, and in the process of this invasion, an automobile is searched, in the garage, and within the curtilage of the private premises." Br. of Pet'r-Appellant, *Scher v. United States*, 1938 WL 63933, at *19-20; *see also* Br. for the United States, *Scher v. United States*, 1938 WL 63934, at *15 ("[Scher] also contends that the search of the automobile constituted a search of the garage and that, since the garage was within the curtilage of his home, it could not be searched without a warrant. We submit that the contentions are without merit.").

But this Court rejected Scher's construction of *Carroll* and the idea that the automobile exception does not apply on curtilage:

> Considering the doctrine of *Carroll v. United States*, 267 U.S. 132 (see *Husty v. United States*, 282 U.S. 694), and the application of this to the facts there disclosed, it seems plain enough that just before he entered the garage the following officers properly could have stopped petitioner's car, made search and put him under arrest. So much was not seriously controverted at the argument.
>
> *Scher*, 305 U.S. at 254-55.

Collins dismisses *Scher* as irrelevant because the government also defended the search as one that was conducted incident to an arrest, Br. for Pet'r at 29, but

that flies in the face of this Court's own treatment of *Scher* as an automobile-exception case. *See, e.g.*, *Ross*, 456 U.S. at 809 & n.11 (citing *Scher* to show that "the exception to the warrant requirement established in *Carroll* . . . applies only to searches of vehicles that are supported by probable cause"); *id.* at 818 (citing *Scher* to show that "[i]n its application of *Carroll*, this Court in fact has sustained warrantless searches of containers found during a lawful search of an automobile").

Moreover, the search-incident-to-arrest component of the case does not explain the Court's observation that officers properly could have searched Scher's car "just before he entered the garage." *Scher*, 305 U.S. at 254-55. Indeed, the Court's citation to *Carroll* in support of that proposition validated then-Solicitor General Robert Jackson's contention for the government that "the prohibition against search of a dwelling without a warrant does not include searches of vehicles made upon probable cause. . . . Had they stopped the car and searched it prior to its being driven into the garage, no search warrant would have been requisite since they had probable cause." Br. for the United States, *Scher*, 1938 WL 63934, at *16. Thus, even from the early days of the automobile exception, it has been applied within the curtilage.

The Court also applied the exception on private property in *Labron*, which resolved two cases on the certiorari filings. In one of them, a truck "parked at the rear of [a] residence" had been searched "[w]ithout a warrant or Appellant's consent." *Pennsylvania v. Kilgore*, 677 A.2d 311, 312 (Pa. 1995), *rev'd sub nom.*

Pennsylvania v. Labron, 518 U.S. 938 (1996) (per curiam). Although the Pennsylvania Supreme Court concluded that probable cause existed to search the truck, it found the search was not justified because of the absence of "any exigent circumstances which would justify the failure of police to obtain a search warrant prior to searching the vehicle." *Id.* at 313. In opposing Pennsylvania's petition for certiorari, Kilgore noted that the "pickup truck in question was parked in a private driveway"; argued that the automobile exception does not apply where "the vehicle is on private land under police control"; and protested that Pennsylvania was "attempting to make the automobile exception apply to all automobiles, *per se*, regardless of circumstances." Resp't's Br. in Opp'n, *Pennsylvania v. Kilgore*, 1996 WL 33467564, at *1, *2, *5.

This Court reversed. Although it acknowledged that Kilgore's truck had been "parked in the driveway of the farmhouse," 518 U.S. at 939, that fact did not impact its analysis. Rather, the Court laid down a broad articulation of the automobile exception: "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *Labron*, 518 U.S. at 940; *see also id.* at 944 (Stevens, J., dissenting, joined by Ginsburg, J.) (noting that "this Court has effectively converted the 'automobile exception' into an absolute rule allowing searches in the presence of probable cause").

Given the Court's categorical treatment of the automobile exception, it is not surprising that most

courts of appeals that have addressed the issue have also found that the exception applies within the curtilage.[9]

2. *Carney* and *Coolidge* do not support Collins's position.

Contrary to Collins's assertion, *see* Br. for Pet'r at 16-18, neither *Carney* nor *Coolidge* bars the application of the automobile exception within the curtilage. In *Coolidge*, police seized the car of a suspected murderer from his driveway three days after he had been arrested; it was "retained in police custody for more than a year and was searched not only immediately after seizure but also on two other occasions: one of them 11 months and the other 14 months after seizure." 403 U.S. at 523 (White, J., dissenting, joined by Burger, C.J.). Although the police had first obtained a warrant, the warrant was ruled invalid, and the Court had to assess whether a warrantless search could be justified under the search-incident-to-arrest doctrine, under the automobile exception, or under the plain-view doctrine. 403 U.S. at 453-73. In Part II-B of the opinion, authored by Justice Stewart, a plurality of the Court concluded that the automobile exception did not apply. *Id.* at 463-64. Collins attributes that result to the

---

[9] *See United States v. Brookins*, 345 F.3d 231, 237-38 (4th Cir. 2003); *United States v. Markham*, 844 F.2d 366, 368-69 (6th Cir. 1988); *United States v. Hines*, 449 F.3d 808, 814-15 (7th Cir. 2006); *United States v. Blaylock*, 535 F.3d 922, 926-27 (8th Cir. 2008); *United States v. Hatley*, 15 F.3d 856, 858-59 (9th Cir. 1994).

vehicle's location in the driveway, which he claims "was critical." Br. for Pet'r at 17.

But Collins puts unwarranted emphasis on the driveway in *Coolidge*. To begin with, the plurality opinion there is "not a binding precedent." *Brown*, 460 U.S. at 737. Four dissenting Justices would have applied the automobile exception. *Coolidge*, 403 U.S. at 504 (Black, J., dissenting in part, joined by Burger, C.J., and Blackmun, J.); *id.* at 521-22 (White, J., dissenting in part, joined by Burger, C.J.). Although Justice Harlan's concurrence provided the fifth vote, he specifically declined to join Part II-B and said nothing about the significance of the driveway in his concurring opinion. *Id.* at 491 (Harlan, J., concurring). To date, "no circuit appears to read *Coolidge* as a per se rule against all driveway searches without a warrant." *United States v. Goncalves*, 642 F.3d 245, 251 (1st Cir. 2011). Indeed, doing so would require this Court to overrule *Scher*.

In any event, the *Coolidge* plurality made clear that it was the absence of "exigent circumstances" that dictated the outcome. 403 U.S. at 464 ("Here there was probable cause, but no exigent circumstances justified the police in proceeding without a warrant."); *id.* at 460 ("The opportunity for search was . . . hardly 'fleeting.'"). The plurality declined to apply the exception because it was not a "case where 'it is not practicable to secure a warrant,'" *id.* at 462 (quoting *Carroll*, 267 U.S. at 153)—an easy conclusion, given that the police had, in fact, obtained a warrant (albeit an invalid one). The plurality also refused to find any exigency in the fact that the "automobile was in a literal sense

'mobile.'" *Id.* at 461 n.18 ("A person who had the keys and could slip by the guard could drive it away. We attach no constitutional significance to this sort of mobility."). Thus, the plurality's reference to the car as "an unoccupied, parked vehicle not then being used for any illegal purpose," *id.* at 463 n.20, must be read in light of its conclusion that no exigency was present.[10]

Moreover, the plurality's determination that no exigency justified a search of the car in the driveway turned on the fact that the objects the police were searching for "were neither stolen nor contraband nor dangerous." *Id.* at 460. The automobile exception did not apply, the plurality reasoned, because "there is nothing in this case to invoke the meaning and purpose of the rule"—including "no alerted criminal bent on flight," "no contraband or stolen goods or weapons," and "no confederates waiting to move the evidence." *Id.* at 462.

In contrast to *Coolidge*, the presence of those factors here more than justified Rhodes's immediate search. There was ample probable cause to believe that the motorcycle was an instrumentality that had been used to commit multiple crimes, and a reasonable officer could have believed that Collins, having just been alerted to Rhodes's interest in the motorcycle, would immediately try to move it. *See supra* Part I.A.2. Unlike the police's three-day delay in searching the car in

---

[10] As set forth above, *supra* Part I.B, the Court's decisions since *Coolidge* have rejected the view that some further exigency, in addition to an automobile's inherent exigency, is necessary.

Coolidge, Rhodes drove to the Dellmead property immediately after he learned of the motorcycle's probable presence there.

Collins also misreads *Carney* to preclude the search of a vehicle parked "up a private driveway," Br. for Pet'r at 18, reasoning that *Carney* involved a parking lot.[11] He says that conclusion follows from the Court's observation that the exception applies when a vehicle "is readily capable of . . . use [on the highways] and is found stationary in a place not regularly used for residential purposes." *See id.* (quoting *Carney*, 471 U.S. at 392-93). When read in context, however, it is clear that the Court employed the phrase "regularly used for residential purposes" merely to distinguish a motor home being used for transportation from one being used solely as a residence. *See Carney*, 471 U.S. at 393 ("[T]he vehicle was so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle."); *id.* at 394 (declining to define when a vehicle is "situated such that it is reasonable to conclude that the vehicle is not being used as a residence"); *id.* ("The exception has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation.").

---

[11] As the Virginia Supreme Court pointed out, the Court's opinion in *Carney* did not indicate whether the parking lot there "was a public facility or a privately owned lot." Pet. App. 20 n.9.

The Court in *Carney* left open that the outcome might be different for "a motor home that is situated in a way or place that objectively indicates that it is being used as a residence," such as if it were "elevated on blocks" or "connected to utilities," contrasting those circumstances with a motor home that had "convenient access to a public road." *Id.* at 394 n.3. Here, by contrast, there is no question that the location of Collins's motorcycle—parked on the driveway with "convenient access to a public road" after it had been used in two high-speed eluding incidents, *id.*—"objectively indicate[d] that the vehicle [was] being used for transportation," *id.* at 394.

Thus, nothing in *Carney*—which permitted the search of a *home* that was being used for transportation—prohibits the search of a *motorcycle* that clearly was being used solely for transportation.

B. The justifications for the automobile exception still apply when a vehicle is parked on a driveway close to a home.

Collins is also mistaken when he asserts that the justifications for the automobile exception evaporate when a vehicle's location on the driveway is inside the curtilage, rather than outside the curtilage. Br. for Pet'r at 19-27. The considerations animating the automobile exception—ready mobility and reduced privacy expectations—apply fully to Collins's motorcycle in the

location where it was parked, in a driveway with immediate access to the road.

First, the original rationale for the automobile exception—the capacity of a vehicle to be "quickly moved," *Carroll*, 267 U.S. at 153—remains true of vehicles parked in driveways with ready access to the road. It is not necessary that a vehicle actually be found in "use[] on the highways" if "it is readily capable of such use." *Carney*, 471 U.S. at 392. Were the rule otherwise, immobile vehicles would not be subject to the exception. *See Cady v. Dombrowski*, 413 U.S. 433, 441 (1973) (observing that warrantless automobile searches "have been sustained in cases in which the possibilities of the vehicle's being removed . . . were remote, if not nonexistent"). Even a parked "vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving." *Carney*, 471 U.S. at 392. That critical characteristic is equally true of vehicles parked in driveways, and it creates an exigency that justifies immediate intervention.

Here, there is no doubt that Collins's motorcycle was readily mobile and therefore easily could have been "put out of reach of a search warrant." *Carroll*, 267 U.S. at 151. It had twice been used to elude police, once at speeds exceeding 140 mph, and since then Collins had installed fresh tires. Pet. App. 62, 65. Parked only a car length or two into the driveway, with "convenient access to a public road," *Carney*, 471 U.S. at 394 n.3, the motorcycle could be kicked into gear in seconds. Whether the motorcycle was a few feet inside the curtilage or a few feet outside it does not change that

it could be very "quickly moved out of the locality or jurisdiction in which the warrant must be sought," *Carroll*, 267 U.S. at 153, or from the location particularly described in a warrant.

Second, the "further justification" for the automobile exception—the "reduced expectation of privacy in an automobile," *Labron*, 518 U.S. at 940—likewise does not turn on precisely how far up a driveway a vehicle is parked. Collins argues that some vehicle regulations apply only when the vehicle is driven on public roadways, and he appears to suggest that a search of a vehicle that has never left private property could draw no support from that justification. Br. for Pet'r at 22-23. But the Court has made clear that the reduced expectation of privacy derives "from the pervasive regulation of vehicles *capable of traveling* on the public highways." *Carney*, 471 U.S. at 392 (emphasis added). Indeed, just as a vehicle's VIN and license plate—two obvious markers of "pervasive regulation," *Labron*, 518 U.S. at 940—do not vanish once a vehicle is moved inside the curtilage, neither does the justification for the automobile exception.

Moreover, "[o]ne has a lesser expectation of privacy in a motor vehicle because its function is transportation" and it "travels public thoroughfares." *Cardwell*, 417 U.S. at 590 (plurality). Here, it was the motorcycle's alarming travel on "public thoroughfares" that sparked law enforcement's attention in the first place. *See Houghton*, 526 U.S. at 303 (automobiles may be "subjected to police stop and examination to enforce 'pervasive' governmental controls 'as an everyday

occurrence'") (quoting *Opperman*, 428 U.S. at 368). That the motorcycle managed to escape law enforcement's grasp in the eluding incidents and return to private property does not render it any less subject to regulation or the enforcement of traffic laws.

An individual's expectation of privacy in a vehicle is reduced even further when the vehicle, as in this case, is plainly visible from the street and parked on a driveway that is part of the normal route used by members of the public to access the home. "Given the fact that police may enter upon such commonly-used areas of the curtilage as a driveway in the course of a legitimate investigation, it would seem that a warrantless seizure of a vehicle from such a place is just as proper as it would be were the car parked on the street." Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 7.3(a) (Thomson/West 5th ed.) (Oct. 2017 update).

C. Police officers need bright-line rules when they confront inherently exigent circumstances, so any limitations to the exception should depend on unambiguous physical distinctions, not on indeterminate curtilage analyses.

This Court has long "noted the virtue of providing clear and unequivocal guidelines to the law enforcement profession." *Acevedo*, 500 U.S. at 577 (punctuation and citations omitted). From its first recognition of the automobile exception in *Carroll*, the Court has

realized the importance of a rule that "is easily applied and understood and is uniform." 267 U.S. at 159. Collins's proposal to make the automobile exception inapplicable within the curtilage—on some parts of a driveway but not others—would undermine that salutary goal. Although the result below fits comfortably within the Court's precedent, if the Court sees the need to limit the scope of the automobile exception on private property, the proper line to draw would be at the physical threshold of a house or a similar fixed, enclosed structure inside the curtilage like a garage.

1. Requiring case-by-case curtilage determinations would undermine the utility and purpose of the automobile exception.

Under Collins's view, before conducting a warrantless automobile search on private property, police officers with probable cause to conduct the search would first need to determine whether the automobile is located within the curtilage. Thus, if "the boundaries of the curtilage are [not] 'clearly marked,'" *Jardines*, 569 U.S. at 7 (quoting *Oliver v. United States*, 466 U.S. 170, 182 (1984)), as here, police officers presumably would be forced to analyze the factors set forth in *United States v. Dunn*, 480 U.S. 294 (1987), before searching a readily mobile automobile parked close to a home:

> [C]urtilage questions should be resolved with particular reference to four factors: [1] the proximity of the area claimed to be curtilage to the home, [2] whether the area is included

> within an enclosure surrounding the home, [3] the nature of the uses to which the area is put, and [4] the steps taken by the resident to protect the area from observation by people passing by.

Id. at 301.

But the *Dunn* Court itself admitted that these factors do not yield straightforward answers: "We do not suggest that combining these factors produces a finely tuned formula that, when mechanically applied, yields a 'correct' answer to all extent-of-curtilage questions. Rather, these factors are useful analytical tools." *Id.*

Requiring officers to make a multi-factor curtilage determination—and then undertake a separate exigency analysis if the curtilage analysis yields a conclusion that the vehicle is parked inside it—raises the potential for confusion and "heightened possibilities for error." *Sanders*, 442 U.S. at 771-72 (Blackmun, J., dissenting). Complicating the automobile exception in this manner "will mean that many convictions will be overturned . . . and guilty persons will be set free in return for little apparent gain." *Id.* Police officers conduct *hundreds of thousands* of involuntary searches of vehicles and their drivers each year.[12] Assuming even a small fraction of those searches are conducted on private property, the impact of a rule with unclear application could be far-reaching, throwing into doubt

---

[12] *See* U.S. Dep't of Justice, Bureau of Justice Statistics, *Police Behavior during Traffic and Street Stops, 2011* (Sept. 2013 (rev. Oct. 27, 2016)) at 2, 10, https://www.bjs.gov/content/pub/pdf/pbtss11.pdf.

searches of vehicles on shared driveways or near multi-resident homes or where curtilage boundaries are not obvious.[13]

This Court's struggle to formulate a workable "container rule" to govern searches of containers found inside vehicles—distinct from searches of the vehicles themselves under the automobile exception—illustrates the importance, "not only for the Court as an institution, but also for law enforcement officials and defendants, that the applicable legal rules be clearly established." *Ross*, 456 U.S. at 825. The Court's decisions in *United States v. Chadwick*, 433 U.S. 1 (1977), *Arkansas v. Sanders*, 442 U.S. 753 (1979), and *Robbins v. California*, 453 U.S. 420 (1981), resulted in a "troubled" jurisprudence around vehicle searches. *Ross*, 456 U.S. at 817; *see also Acevedo*, 500 U.S. at 577 (recognizing the *Chadwick-Sanders* rule as "the antithesis of a clear and unequivocal guideline" (punctuation altered)). Those difficulties were resolved only by conforming the scope of warrantless vehicle searches to *Carroll*'s categorical rule. Thus, the Court announced in *Acevedo* that it would "interpret *Carroll* as providing

---

[13] Further complicating the issue is Collins's point that an "'overnight guest in a home may claim the protection of the Fourth Amendment.'" Br. for Pet'r at 4 n.1 (quoting *Minnesota v. Carter*, 525 U.S. 83, 90 (1998)). Assuming that confers standing to exclude an officer not only from searching the home itself but also from walking up the driveway to the home, a guest's privacy interests may not be obvious—especially where, as here, the guest expressly disclaims any knowledge of the house or the vehicle. Pet. App. 59; JA 76-77.

one rule to govern all automobile searches." 500 U.S. at 580.

Rather than forcing police officers to conduct case-by-case curtilage and exigency determinations, the Court should retain a categorical rule that can be easily and consistently applied by police officers responding to the inherent exigencies posed by readily mobile automobiles.

2. The automobile exception should apply at least up to the threshold of an enclosed physical structure in the curtilage—a defined line that is easy to understand and adequately protects privacy and property interests.

To the extent the Court sees the need to articulate a limit to the scope of the automobile exception on private property—even though no such limit is required to resolve this case—the more sensible bright line would be at the physical threshold of a house or a similar fixed, enclosed structure like a garage. Prohibiting intrusion into an enclosed physical structure within a home's curtilage to conduct a warrantless automobile search would accord with existing Fourth Amendment case law.

The "'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *Payton v. New York*, 445 U.S. 573, 585 (1980) (quoting *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972)). As Collins points out, Br. for Pet'r

at 10-11, it is inside the home that privacy interests are at their peak. In no setting "is the zone of privacy more clearly defined than when bounded by the *unambiguous physical dimensions* of an individual's home." *Payton*, 445 U.S. at 589 (emphasis added); *see also Silverman v. United States*, 365 U.S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."). In *Payton*, for instance, the Court found that the Fourth Amendment prohibits a warrantless entry into a suspect's home to make a routine felony arrest. 445 U.S. at 576. The Court reasoned that, "[i]n terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the *entrance to the house*. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id.* at 590 (emphasis added).

Outside the "entrance to the house" is a different matter. In *United States v. Santana*, for example, this Court upheld the arrest of a suspect who had retreated from the "doorway of [her] house" back into the "vestibule." 427 U.S. 38, 41 (1976). The Court held that

> [w]hile it may be true that under the common law of property the threshold of one's dwelling is "private," as is the yard surrounding the house, it is nonetheless clear that under the cases interpreting the Fourth Amendment Santana was in a "public" place. She was not in an area where she had any expectation of privacy. . . . Thus, when the police, who

> concededly had probable cause to do so, sought to arrest her, they merely intended to perform a function which we have approved in [*United States v.*] *Watson*[, 423 U.S. 411 (1976)].

Id. at 42.

Drawing the line at the threshold of physical structures located inside the curtilage also would be more consistent with the privacy concerns that motivated this Court's decisions in *Kyllo v. United States*, 533 U.S. 27 (2001), and *Jardines*. In *Kyllo*, the Court noted that "the Fourth Amendment draws 'a firm line at the entrance to the house.'" 533 U.S. at 40 (quoting *Payton*, 445 U.S. at 590). The Court added that the "line . . . must be not only firm but also bright." *Id.* So the Court concluded that the use of "a device that is not in general public use, to explore *details of the home* that would previously have been unknowable *without physical intrusion*," constitutes a "search" under the Fourth Amendment. *Id.* (emphasis added).

Likewise in *Jardines*, this Court worried that the "right to retreat" into one's home "would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window." 569 U.S. at 6. The concurring Justices noted similarly that the officers had used "trained canine assistants to reveal *within the confines of a home* what they could not otherwise have found there." *Id.* at 13 (Kagan, J., concurring, joined by Ginsburg and Sotomayor, JJ.) (emphasis added). Citing *Kyllo*'s "intention to draw both a 'firm' and a 'bright' line at 'the

entrance to the house,'" the concurrence concluded that the officers had "conducted a search because they used a 'device . . . not in general public use' (a trained drug-detection dog) to 'explore details of the home' (the presence of certain substances) that they would not otherwise have discovered without *entering the premises*." *Id.* at 14-15 (emphasis added).

Collins's "right to retreat" into his girlfriend's home was not "significantly diminished" by Officer Rhodes's search of the motorcycle parked on the driveway. *Id.* at 6. And that search did not allow Rhodes to "explore details of the home that would previously have been unknowable without physical intrusion." *Kyllo*, 533 U.S. at 40. Accordingly, the Court can affirm the constitutionality of Rhodes's search while maintaining the "firm" and "bright" line that the Court has drawn "at the entrance to the house." *Id.*

The passages of Blackstone's *Commentaries* that Collins relies on—discussing the common-law crime of burglary—also support distinguishing warrantless searches inside fixed, physical structures from searches conducted outside of them. *See* Br. for Pet'r at 10-12 (citing 4 W. Blackstone, *Commentaries on the Laws of England* 223, 225 (1769 ed.)). Blackstone wrote that "the law regards thus highly nothing but permanent edifices"; so burglary could be committed in a "mansion or dwelling house," as well as a "barn, stable, or warehouse" if it is "parcel of the mansion-house" and "within the curtilage," even if it is "not under the same roof or contiguous" to the house. 4 Blackstone 225, 226. By contrast, burglary cannot "be committed

in a tent or booth erected in a market or fair." *Id.* at 226. It would "no more make[ ] it burglary to break it open, than it would be to *uncover a tilted waggon* [sic] in the same circumstances." *Id.* (emphasis added). Thus, even from that early time, a partially exposed vehicle simply has not been entitled to the same protections as a "mansion or dwelling house" or a "barn, stable, or warehouse" where a "waggon" or some other vehicle might be enclosed.

Having the automobile exception turn on whether or not the vehicle is enclosed within a physical structure—rather than simply whether it is located inside the curtilage—also aligns better with the justifications for the exception. First, while a vehicle's ready mobility does not depend on whether it is parked on one part of the driveway inside the curtilage, or on another part of the driveway outside it, *see supra* Part II.B, a vehicle parked inside an enclosed structure has its mobility limited by a physical barrier, making for less "convenient access to a public road." *Carney*, 471 U.S. at 394 n.3.

Second, notwithstanding the reduced expectations of privacy in vehicles, individuals have a greater expectation of privacy in enclosed areas shielded from public view, such as homes and garages, than they do in open curtilage. *Cf. Katz v. United States*, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection."). A driveway likewise is subject to a lower expectation of privacy, particularly when it is plainly visible from the street, as it was here.

Finally, when a vehicle is housed inside an enclosed structure, rather than outside it, it becomes more difficult to determine whether the vehicle is being "used for residential purposes." *Carney*, 471 U.S. at 392. While an officer may reasonably presume that a vehicle parked on a driveway is used for transportation—absent other indicia to the contrary—an officer cannot as easily make the same presumption about a vehicle parked inside a closed garage. *See* LaFave, *Search and Seizure* § 7.2(b) n.59 (noting that *Carney*'s language may distinguish a vehicle "located inside private premises (e.g., a garage)" from a vehicle "parked on the grounds of the residence").

III. If the curtilage determination matters, the case should be remanded.

If this Court decides that the outcome of this case turns on whether the motorcycle was parked on a portion of the driveway situated within the curtilage, the Court should remand the case to the Supreme Court of Virginia for further proceedings.

None of the courts below made a curtilage finding. *See* Pet. App. 105-07 (bench ruling); Pet. App. 41 (Va. Ct. App. op.) ("assum[ing] without deciding that Officer Rhodes entered the curtilage when he walked up the driveway"); Pet. App. 30 n.4 (Va. S. Ct. op.) ("I do not address the question of whether the part of the driveway where the motorcycle was parked . . . was curtilage. . . .") (Mims, J., dissenting). In fact, the Court of Appeals of Virginia, noting the lack of detail in the

record, expressly "decline[d] to conjecture the facts necessary to perform a precise analysis." Pet. App. 41.

But that does not mean, as Collins argues, Br. for Pet. at 32, that the Commonwealth did not dispute below Collins's curtilage claim. It did—*see, e.g.*, JA 239 (denying that "it is undisputed that Rhodes entered the curtilage")—and with good reason. To begin with, a driveway is not a "classic exemplar" of curtilage like the front porch in *Jardines*, 569 U.S. at 7. Unlike the front porch, which is connected to the home, the various possible configurations and lengths of driveways preclude a one-size-fits-all generalization; part of the driveway may be curtilage while another part of it may not be. *See, e.g.*, *United States v. Beene*, 818 F.3d 157, 162 (5th Cir. 2016) (finding that the portion of the driveway where the vehicle was parked "was not part of the curtilage").

And in this particular case, three of the four curtilage factors discussed in *Dunn* militate against finding that the motorcycle was parked within the curtilage. The driveway was not within an enclosure that also surrounded the home; the driveway was used only to park vehicles; and no fence or gate was used to shield activities in the driveway from passersby. *See* Pet. App. 112-13 (photographs). Under such circumstances, the portion of the driveway where the motorcycle was parked was not curtilage because it did not "harbor[] the 'intimate activity associated with the sanctity of a man's home and the privacies of life.'" *Dunn*, 480 U.S. at 300 (quoting *Oliver*, 466 U.S. at 180). Indeed, Collins himself posted pictures of the driveway and the

motorcycle on his Facebook page, refuting any notion that he tried to keep his activities there entirely private.

Contrary to Collins's suggestion, though, Br. for Pet'r at 34-35, this Court should not make a curtilage determination in the first instance. *See Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012) (noting that this Court "is a court of final review and not first view" and "[o]rdinarily . . . do[es] not decide in the first instance issues not decided below") (internal punctuation and citations omitted). If the Court concludes that a curtilage finding is determinative of the outcome here, then it should remand the case for resolution of that disputed question.

CONCLUSION

The judgment of the Supreme Court of Virginia should be affirmed.

Respectfully submitted,

MARK R. HERRING
Attorney General
of Virginia

MATTHEW R. MCGUIRE
Acting Deputy
Solicitor General

CHRISTOPHER P. SCHANDEVEL
Assistant Attorney General

TREVOR S. COX
Acting Solicitor General
Counsel of Record

OFFICE OF THE VIRGINIA
ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7704
tcox@oag.state.va.us

December 13, 2017